

TOWN OF TIVERTON
PLANNING BOARD OF APPEALS MINUTES

OCTOBER 6, 2008

The following petition was received and heard by the Tiverton Planning Board of Appeals on Monday, October 6, 2008 at 7:30 pm at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Vice-Chairman Jay Jackson, Raymond LaFazia (first alternate), Susan Krumholz, Lise Gescheidt, Richard Taylor and Michael Mello (second alternate).

Also present were: Vernon Gordon, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

A petition has been filed by James McInnis, Trustee for Tiverton Associates Trust, appealing a decision of Christopher Spencer, Administrative Officer to the Planning Board, dated May 6, 2008 denying his Master Plan application of property on Souza Road, Tiverton, RI being Map 1-2 Block 92 Card 9 on Tiverton Tax Assessor's maps and located in a R40 zoning district.

DECISION: Mr. Gordon briefed the Board on the petition and stated the Board heard presentation by both the applicant and Ms. Scott on behalf of the Administrative Officer from when this appeal was taken. The Board accepted some exhibits and heard the arguments and the Board closed the hearing but there was some concern that the documents that were presented had not been given to the Board in sufficient time in advance of the meeting to allow the Board to review them. The Board also wanted to review the documents and exhibits submitted and for this reason, this matter was continued for a decision.

Mr. Gordon stated the Board is here tonight not only to get any information needed after reviewing the documents but primarily to issue a decision on the appeal whether or not the Administrative Officer, Mr. Spencer, was in error when he rejected the master plan application filed by Mr. McInnis.

Ms. Gescheidt asked whether or not a memorandum was submitted by Mr. Spear and Mr. Gordon replied the Board received a memorandum from Ms. Scott and Mr. Spear submitted two cases that he had referred to and it was requested that he deliver it.

Ms. Gescheidt stated after reviewing the statutes it was her belief that the statutory language and ordinance supports the conclusions. Ms. Gescheidt went on to say she specifically rejects that an Applicant can change the statutory language which clearly suggests that these meetings and filings should be not

concurrent but one should follow the next. Ms. Gescheidt cited language in General Laws 45, 23, 35 stating that one or more pre-application meetings shall be held for all major land development or subdivision application and they are not for the sole use of the Applicant. Ms. Gescheidt stated subsection B clearly indicates that this is for the mutual benefit of the Town and for the Applicant. General Laws 45, 23, 39-E requires that before a master plan review can take place, it must be preceded by a pre-application meeting specified at 45, 23, 35 or at least an unfulfilled request for one before an Applicant can proceed with filing an application for a land development plan and Ms. Gescheidt stated in this case, there was no request for pre-application meeting.

Ms. Gescheidt stated Mr. Spencer had the obligation to reject the application because of the mandatory language of the statute and the ordinance, that the administrative officer's interpretation must be given deference as long as it's not clearly erroneous or unauthorized, and that we should defer to the actions of the Administrative Officer in this case.

Ms. Gescheidt made a motion to uphold the decision of rejecting the application that the ordinance and state law require pre-application meetings prior to the filing of a master plan and that in this case no pre-application meeting or request for one was made prior to the attempt to file the master plan application. Mr. Taylor stated he agreed with Ms. Gescheidt and seconded her motion. The vote was unanimous. Voting were: Vice-Chairman Jay Jackson, Ms. Gescheidt, Mr. Taylor, Ms. Krumholz and Mr. LaFazia.

Whereupon the Planning Board of Appeals concluded.

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 3 pages in the matter of Planning Board of Appeals held on Monday, October 6, 2008 are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 10th day of November, 2008.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009.